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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Jeremy Thacker,

Plaintiff,

v.

GPS Insight, LLC; Robert J. Donat,
Individually and as Trustee of The
Robert Donat Living Trust Dated April
19, 2017,

Defendants.

No. 2:18-cv-00063-PHX-SMM

**DEFENDANTS' OBJECTIONS TO
DRAFT PRELIMINARY JURY
INSTRUCTIONS**

Defendants have the following objections to the draft preliminary jury instructions provided to counsel via email on January 23, 2020:¹

- Page 1, Line 19: Object that the phrase "Interference with an Employment Relationship" states to the jury that any interference with an employment relationship is actionable. Arizona law requires that the interference be *improper*. See *Wagenseller v. Scottsdale Mem'l Hosp.*, 147 Ariz. 370, 388, 710 P.2d 1025, 1043 (1985) ("We therefore adopt the Restatement's required showing of an "improper" interference. In addition to proving the four elements stated in *Antwerp, supra*, the plaintiff bringing a tortious interference action must show that the defendant acted improperly."). Defendants request the word "Improper" be added to modify the instruction to read as

¹ Defendants also respectfully suggest typographical revisions at page 2, line 24 ("invade" → "invaded"); page 3, line 8 ("Insigh" → "Insight").

- 1 follows: “Improper Interference with an Employment Relationship.”
- 2 • Defendants request that the jury be instructed on Defendants’ defense of conditional
- 3 privilege, as provided in the parties’ joint proposed jury instructions, (Doc. 170 at 75).
- 4 As with truth, the conditional privilege is a defense to the defamation claim (as it
- 5 relates to the alleged cold sore/herpes statement). *See* Restatement (Second) of Torts
- 6 § 595.

7 RESPECTFULLY SUBMITTED this 29th day of January, 2020.

8 **STINSON LLP**

9 By: /s/ Carrie M. Francis

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2020, I caused the foregoing document to be filed electronically with the Clerk of Court through ECF; and that ECF will send an e-notice of the electronic filing to:

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I hereby certify that on January 24, 2020, a courtesy copy will be e-mailed to:

Judge Stephen M. McNamee
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/s/ Karen Graves